IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Zabid & Others Vs. State of Rajasthan
(D.B. Criminal Appeal No.1172/2003)

2. Ishaq Vs. State of Raj.
(D.B. Criminal Jail Appeal No.1442/2003)

D. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 23-7-2003 in Sessions Case No.12/2001 passed by Shri Heera Lal Chanda, RHJS, Additional Sessions Judge Sambhar Lake District Jaipur.

Date of Judgment: July 10, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE SANGEET LODHA

Mr. Biri Singh Sinsinwar] for the appellants.
Mr. Kamlendra Sihag]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

The appellants, seven in number, were put to trial before the learned Additional Sessions Judge Sambharlake District Jaipur, who vide judgment dated July 23, 2003 convicted and sentenced them as under:-

Appellants Zabid, Ishaq, Islam, Sayeed, Imran, Jamshed and Jaikam:

U/s.396 IPC:

Each to suffer imprisonment for life and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.364/149 IPC:

Each to suffer rigorous imprisonment for ten years and fine of

Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.397 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.307/149 IPC:

Each to suffer rigorous imprisonment for seven years and fine of Rs.1000/-, in default to further suffer three months simple imprisonment.

U/s.302/149 IPC:

In view sentence under section 396 IPC no separate sentence was awarded.

Appellants Zabid, Islam, Sayeed, Imran and Jaikam:
U/s.3/25 Arms Act:

Each to suffer rigorous imprisonment for one year and fine of Rs.500/-, in default to further suffer one month simple imprisonment.

Sentences were directed to run concurrently.

2. On February 5, 2001 informant Om Prakash (Pw.9) submitted a written report (Ex.P-19) at Police Station Dudu stating therein that on Truck No.DL-1G/A-8655 informant was cleaner whereas Kashi Ram was Driver. On February 4, 2001 they loaded 75 bales of cotton on the truck and proceeded from Ahmedabad. On their reaching at Jawaja at 7 PM, another Truck No.DL-1G/A-6389 overtook them and obstructed their path. Their truck got halted. Thereafter six persons armed with Deshi Katta (country made pistol), Sword, Knife and Iron rod got down of another Truck and over powered them by entering upon their Truck. One of them pushed down driver Kashi Ram, occupied his seat and drove the truck. Hands and feet of informant and Kashi Ram got tied with Muffler. Both the trucks were then

taken to Ajmer Bye-pass where informant and Kashi Ram pushed in another truck under the supervision of three miscreants. On February 5, 2001 around 1 AM in the night the trucks reached near Gadota, where the informant and Kashi Ram were thrown on the Road. Kashi Ram was crushed by them under truck No.DL-1G/A6389. The informant some how saved himself. The miscreants took the truck along with goods towards Jaipur. On that report case under sections 364, 396 and 307 IPC and 3/25 Arms Act was registered and investigation commenced. On completion of investigation charge sheet was filed against the appellants. In due course the case came up for trial before the learned Additional Sessions Judge Sambhar Lake District Jaipur. Charges under sections 364/149, 396, 397, 302/149, 307/149 IPC and 3/25 Arms Act were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 34 witnesses. In the explanation under section 313 CrPC, the appellants claimed innocence. One witness in defence was examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. As per postmortem report (Ex.P-65) following ante mortem injuries were found on the dead body of Kashi Ram:-

1. Crushed lacerated wound of size 10cm x 5cm x bone deep involving Rt. upper limb (upper arm) with of = humerus.
2. Abraded bruise of size 15cm x 10cm reddish in colour present on Rt. Scapular Region.
3. Crushed lacerated wound of size 15cm x 8cm x bone deep of Rt. thigh with multiple = of Rt. femur and crushing of all muscle and vessels with =of hip joint.
4. Lacerated wound of size 8cm x 6cm x muscle deep on Lt. thigh with =femur bone.
5. There is = of 3,4,5,6,7,8,9th rib (3rd to 9th rib) of Rt. side chest

in anterior axillary line.

Dr. C.M. Agrawal (Pw.17), who performed autopsy on the dead body deposed that the deceased was possibly run down under the truck and sustained the injuries.

4. Om Prakash (Pw.9), the only eye witness examined at the trial supported the contents of FIR and deposed that on February 3, 2001 he proceeded from Ahmedabad in Truck No.DL-1G/A-8655 which was driven by driver Kashi Ram. When they were on route towards Beawar another Truck No.DL-1G/A-6389 of Mewat Transport Company Delhi overtook their truck and got it halted. Thereafter six persons armed with Deshi Katta (country made pistol), Sword, Knife and Iron rod got down of the Truck and entered into their Truck. They were over powered by the miscreants. One of the miscreants whom they were addressing Jamshed occupied driver seat and drove the truck. Near Ajmer Bye-pass both the trucks got stopped and he and Kashi Ram were shifted to another truck. When trucks reached near Gadota the miscreants threw both of them on the road and Kashi Ram was run over under the truck. The miscreants wee correctly identified by Om Prakash.

5. It is established from the record that till the appellants got identified in the identification parade they were kept Ba-parda (with covered face). It is also proved that the appellants over powered the deceased and informant Om Prakash and drove their truck. However they were nabbed by the police near Transport Nagar Jaipur. We however find it difficult to believe that the appellants deliberately killed Kashi Ram by running him down under the truck. This possibility cannot be ruled out that in order to save his life Kashi Ram jumped from the truck, fell down on the road and

accidently crushed by the vehicle, that was passing through the road.

6. Section 364 IPC is intended to punish kidnapping and abduction which expose the kidnapped or abducted person to the danger of losing his life. The two illustrations appended to section, respectively, to abduction of person to be offered as a human sacrifice and those destined to die at the hands of assassins. But in the case on hand it does not appear that the intention of appellants was to commit murder of Kashi Ram. All the appellants were armed with fire arms and dangerous weapons but they did not inflict any injury on the person of Kashi Ram or Om Prakash instead they pushed Kashi Ram and Om Prakash out of the truck.

7. Section 396 IPC does not deal only with the individual liability of the actual murderer for a murder committed in course of a dacoity but also the liability of the other members of the gang for the act of their associate.

8. To attract Section 397 IPC, it is necessary to establish that at the time of committing robbery or dacoity, the offender had used any deadly weapon or had caused grievous hurt to any person or had attempted to cause death or grievous hurt to any person. This section does not render independently any act of offence. It only provides minimum punishment.

9. Having closely scanned the material on record we find that the prosecution could not establish the charges under sections 396, 397, 302/149, 307/149 IPC and 3/25 Arms Act. The appellants are found guilty for having committed offence of attempted robbery and guilt under section

393/149 IPC is found established against them.

10. For the reasons aforementioned, we partly allow the appeals of appellants and instead of Section 364/149 we convict the appellants Zabid, Ishaq, Islam, Sayeed, Imran, Jamshed and Jaikam under section 393/149 IPC and sentence each of them to suffer rigorous imprisonment for seven years. We however acquit the appellants of the charges under sections 396, 397, 302/149, 307/149 IPC and 3/25 Arms Act.

The impugned judgment of trial court stands modified as indicated above.

(Sangeet Lodha),J. (Shiv Kumar Sharma)J.

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